

NOV 14 2007

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5709
Gallagher for Senate and Kenneth Lancaster,)
in his official capacity as treasurer)

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

Find probable cause to believe that Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose disbursements totaling \$1,358,937 in the Committee's 2004 July Quarterly Report

II. BACKGROUND

This matter concerns the failure of Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer, (collectively "Respondents") to disclose disbursements totaling \$1,358,937 in the Committee's 2004 July Quarterly Report. On February 24, 2006, the Commission found reason to believe Respondents violated 2 U.S.C. § 434(b) and authorized an investigation. When the investigation disclosed that the failure to disclose the disbursements was the result of administrative oversight,

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1 This Office served Respondents with the General Counsel's Brief, incorporated herein by
2 reference, which sets forth the factual and legal basis upon which this Office is prepared to
3 recommend that the Commission find probable cause to believe that Respondents violated
4 2 U.S.C. § 434(b). Respondents submitted a reply brief ("Reply") in which they requested a
5 probable cause hearing pursuant to the Commission's Policy Establishing a Pilot Program for
6 Probable Cause Hearings, a request that the Commission declined to grant. Accordingly, for the
7 reasons discussed herein, we recommend that the Commission find probable cause to believe that
8 Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer, violated
9 2 U.S.C. § 434(b)

10 **III. DISCUSSION**

11 In its Reply, the Committee does not contest the violation but contends that the failure to
12 report the disbursements at issue was an unintentional error and argues that they should not be
13 punished for voluntarily disclosing the disbursements. Reply at 4. The Committee further
14 contends that this matter should be dismissed in order to encourage voluntary compliance and
15 self-correction of reporting errors, arguing that, were it not for the Committee's self-reporting of
16 the error, the Commission never would have discovered the error, and, therefore, punishing the
17 Committee for correcting the error "send[s] a signal to the regulated community NOT to report
18 mistakes." *Id.* at 5 (emphasis in original).
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The Committee further argues in its Reply that the disbursements at issue were already a matter of public record before the original erroneously filed report, because the amounts at issue were included among the amounts reported on an FEC Form 10 filed by the candidate on June 15, 2004, before the Committee's original July Quarterly Report was filed. *Id.* However, while the Committee did file an FEC Form 10 on June 15, 2004, the form discloses only that the candidate expended a total of \$2,567,250 in his personal funds. It does not disclose the exact disbursements at issue, as required by the Act, including information identifying the transaction, by name, date, amount, or purpose.

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Therefore, as there is no question with respect to the substantive violation, we recommend that the Commission find probable cause to believe Respondents violated 2 U.S.C. § 434(b).

IV.

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V. RECOMMENDATIONS

1. Find probable cause to believe Gallagher for Senate and Kenneth Lancaster, in his official capacity as treasurer, violated 2 U.S.C. § 434(b);
2. _____
3. Approve the appropriate letter.

Date

11/14/2007

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